

**Letter of Findings Number: 01-20140198
Individual Income Tax
For Tax Year 2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUES

I. Adjusted Gross Income Tax - Liability.

Authority: IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012).

Taxpayer protests the imposition of adjusted gross income tax.

II. Tax Administration - Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an individual who owned Company, a C Corporation. Company dissolved at the end of 2012 and paid certain amounts to Taxpayer. The amounts paid had been carried on Company's books as a loan to Taxpayer. Taxpayer filed his 2012 federal income tax return reporting the payments as dividends as having been paid in 2012. Subsequently, the Indiana Department of Revenue ("Department") audited Company. During the audit, the Department disagreed with Company's characterization of the amounts as loans to Taxpayer and adjusted the records to reflect the payments as dividends which were paid to Taxpayer in tax years 2010 and 2011. An accompanying investigation report adjusted Taxpayer's individual income tax returns for tax years 2010 and 2011 to reflect the change. Taxpayer paid the resulting additional individual income tax. After the audit, Taxpayer filed his 2012 Indiana income tax return, deducting the payments from Company from his federal adjusted gross income to reflect the adjustment made by the Department's investigation report. The Department did not accept this treatment and issued a proposed assessment for individual income tax, penalty, and interest. Taxpayer protests the proposed assessment of individual income tax and the imposition of a penalty. An administrative hearing was held, and this Letter of Findings results. Additional facts will be provided as needed.

I. Adjusted Gross Income Tax - Liability.

DISCUSSION

The Department issued proposed assessment of additional individual income tax, and Taxpayer protests this assessment. All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). The issue before the Department is whether Taxpayer met its burden to prove the Department's assessment is incorrect.

Taxpayer has established that as a result of the investigation report, he reported and paid tax on the amount of the dividends in tax years 2010 and 2011. This amount should not be reported again on his 2012 individual income tax return. Taxpayer has met his burden, and his protest is sustained.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration - Negligence Penalty.

DISCUSSION

The Department issued a proposed assessment for additional individual income tax, penalty, and interest for the tax year 2012. Taxpayer protests the imposition of a penalty.

A taxpayer who, upon examination by the Department, incurs a deficiency that is due to negligence "is subject to a penalty." IC § 6-8.1-10-2.1(a). The Department shall waive the penalty if the taxpayer demonstrates that the failure to pay the deficiency "was due to reasonable cause and not due to willful neglect." IC § 6-8.1-10-2.1(d); see also [45 IAC 15-11-2](#). The taxpayer may demonstrate reasonable cause by showing affirmatively that it used "ordinary business care and prudence" in not paying the outstanding taxes. However, the taxpayer's ignorance of Indiana's tax laws does not constitute reasonable cause. Whether a taxpayer demonstrates reasonable cause for penalty purposes is a fact-sensitive question and determined on a case-by-case basis. [45 IAC 15-11-2](#)(b) and (c).

In this case, Taxpayer has demonstrated that he had reasonable cause in his failure to pay the deficiency. Taxpayer's protest is sustained.

FINDING

Taxpayer's protest is sustained.

SUMMARY

Taxpayer's protest is sustained on Issue I regarding his liability for adjusted gross income tax. Taxpayer's protest is sustained on Issue II regarding imposition of a negligence penalty.

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